Testimony of Anne K. Bingaman

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Thank you Mr. Chairman and members of the Committee. For the record I am Anne K. Bingaman, President of the Local Telecommunications Division of LCI International Telecom Corporation. LCI is the sixth largest facilities-based long distance telecommunications carrier in the United States. In 1997 our revenues were more than $1.6 billion. We provide voice and data services to residential and business customers in all 50 States and to more than 230 international locations. LCI has been offering local phone service using resale of incumbent local exchange carrier facilities since October, 1996, and is presently providing local service in over 40 markets nationwide.

I am here today to tell you that we still have a long way to go to get the local competition Congress envisioned in the Telecommunications Act. Despite the best efforts of LCI and dozens of other companies seeking to become true Competitive Local Exchange Carriers (CLECs), local competition is not yet available to more than a handful of residential and small business customers

nationwide.

Even in the large business customer sector competition is not yet widespread outside of the business districts of major urban areas. In fact, almost all of the competitive local exchange service available today is targeted exclusively at large business customers.

This hearing is very timely. The RBOCs have been pressing hard to be allowed into the long distance market – and there are disturbing signs that the State of New York and the Department of Justice may be very close to endorsing RBOC entry into long distance in New York before Bell Atlantic has fully opened its local monopoly to competition. The New York Public Service Commission's staff proposal of March 17, 1998, if it is in fact preapproved by the Department of Justice, may very well serve as the model – the high water mark – which is rolled out to all States, including the States represented by members of this Committee.

If that happens, it will be many years – a decade or more -- before most residential and small business consumers will see any meaningful competition at the local level. In the meantime, those consumers could easily see competition in the long distance market shrink, with the result that prices will increase in that market as well.

This is not a doomsday scenario. It is the simple truth. The economics of entering the local market without cost-based access to the existing local network is simply cost prohibitive. I urge the Committee to remind the Department of Justice and the FCC that the public interest prong of the section 271 entry test is intended to ensure that – even if the checklist is met – the RBOCs are not let into the long distance market until there is meaningful competition in the local market. The Senate voted 68 to 31 to keep the public interest test, and consumers will thank you in the end for doing so.

Let me tell you what is going on as we speak in Albany, New York. On the afternoon of March 17 the New York Public Service Commission (PSC) staff released a draft of what they would recommend the Chairman accept as Bell Atlantic's commitment, at which point the Chairman would agree to approve long distance entry. The 34 page document includes significant new concepts that had never been publicly discussed before, yet competitors who would be seriously harmed by the proposal were given only six days (including the weekend) in which to submit comments that were limited to 10 pages. All requests for evidentiary hearings were denied.

The New York PSC staff are recommending that Bell Atlantic should only be required to provide a UNE platform to residential customers for three years in urban areas and five years in suburban and rural areas. In addition, they proposed eliminating the UNE platform entirely for business customers in the New York City LATA, and providing only a limited analog "Plain Old Telephone Service (POTS)" UNE platform for three to five years for business customers outside of New York City. This means that competitors would be unable to use the UNE platform to provide T1 lines or any other digital service to business customers throughout the State at cost based rates.

Not only does this staff proposal violate good public policy, it clearly violates the statutory requirements Congress included in the Telecommunications Act. It discriminates against competitors and consumers on the basis of where they live and what service they seek.

This proposal seems to be based on the completely false assumption that there is effective facilities-based competition for local service to residential and small business customers. That is not true today, nor will it be any time in the foreseeable future. What should concern the Committee is that New York is rapidly moving toward approval of a plan that is fundamentally in conflict with what Congress sought to achieve when it enacted the Telecommunications Act.

There is a second aspect to this rush to judgment that Congress should be concerned about. The New York staff proposal states that it was prepared after consultation with, among others, the Department of Justice. In addition, parties filing comments on the staff proposal were required by the New York PSC to also serve copies of the comments on three staff members of the Department of Justice.

While all the facts are not clear, it seems clear from the documents and actions of the New York staff, as well as comments I have heard from other parties, that the Department of Justice is playing an active and closely coordinated role in the actions of the New York PSC. Several people have expressed concerns with this pre-filing activity by Justice, and I have come to share those concerns.

The concern is that Congress contemplated Justice's role in the section 271 process as a neutral arbiter that would apply the law to the facts placed on the record before the FCC – the record which is filed with each application and contains the recommendations and findings of the States. More importantly for this discussion, however, is that the record before the FCC also contains the public comment of interested parties to the application. None of that has happened in the context of the New York staff's totally new proposal of first

limiting and then terminating altogether in three to five years the availability of the UNE platform.

Yet if Justice does pre-approve New York's actions, either openly or otherwise, and it commits to support the New York PSC's action at some future date in the FCC proceedings, then Justice's decision on this crucial issue of the UNE platform availability has been taken without the benefit of evidentiary hearings.

Our concern is that Justice may be stepping outside the quasi-judicial role assigned by Congress – for which Congress gave Justice's views "substantial weight" – into the role of an active participant negotiating an outcome before the fact. Any behind the scenes role influencing a state body that has not yet made a public decision is not, I believe, what Congress believed Justice's role would be when it enacted the Telecommunications Act of 1996.

Importantly, support for the UNE platform is bipartisan and widespread. For example, New York's Republican Attorney General, Dennis Vacco, filed comments with the New York PSC on Monday expressing strong support for extending the availability of the UNE platform for a longer period, perhaps ten years, with triennial public hearings to determine if competitive alternatives to the vast RBOC network are available.

As he put it on page 5 of his comments, “it is by no means clear that the UNE platform phase-out in the Draft Pre-Filing will support the development of local telephone competition in all parts of New York or for all types of local telephone service, especially residential service.” Attorney General Vacco’s statement is so important to the debate that I ask that it be included as an exhibit with my testimony. I hope you all will read at least pages 5 and 6.

Let me explain further why cost based access to the local network is so important, and why the New York staff proposal to drastically limit and then terminate the UNE platform is so devastating to local competition. Only a fraction of the competition for large businesses is provided entirely using CLEC facilities. In most cases, the CLEC only provides the backbone portion of the local facilities – the fiber ring that connects the RBOC central office to the CLEC switch. The wires that actually go from the central office to the customer are owned by the RBOC and leased on a private line basis by the CLEC.

Some CLECs like Teleport and MFS have been building out local networks in New York City for almost 10 years. To date they reach fewer than 20 of the 75 central offices in New York City proper. Over half of those 20 central offices are located below West 59th Street – they serve large business customers in Wall Street and Midtown. By and large, the CLECs all concentrate

their facilities in same areas – areas where large business users are concentrated.

This is demonstrated dramatically by a list recently published by Bell Atlantic. This list identifies ALL of the central offices in New York state in which competitors have collocated. There are only 31 offices on that list for the entire State. 26 of those offices are located in the New York City LATA, which includes the five boroughs, Westland and Rockland counties, and Long Island. Yet there are more than 186 central offices in the New York City LATA alone.

This means that more than 75 percent of the residential lines in the New York LATA – the most competitive in the country – are served out of central offices where no competitor is even collocated today. Nor is it likely that a competitor will be collocated with those offices in three years – when the UNE platform ends for New York City under the staff proposal – because the volume of traffic from residential and small business customers simply isn't great enough to justify the major investment collocation would require.

Thus, the only cost effective way for competition to reach small business and residential customers, even in New York City, is through the monopoly local network that those same customers have bought and paid for over the past 60 years. That is why the New York decision is so crucial to competition – both in

New York and elsewhere due to the precedent it will set.

This is why the unbundled network element platform you have all heard about is so important. The UNE platform allows a competitor to get access to the lines to the customer on the same cost basis as the RBOC. Under section 252(d) of the Communications Act, UNEs are required to be priced at cost, which may include a reasonable profit. This means that competitors pay the full cost of each of the UNEs that they obtain. And, just like the RBOC, the competitor gets to keep all of the revenue from access charges for use of the network by the customer. This creates the level playing field Congress intended.

You may have heard from some people that the Eighth Circuit said the RBOCs do not have to provide the UNE platform. I disagree. The Eighth Circuit clearly stated that the RBOC must provide all network elements requested by a competitor – even if those elements in combination result in a service available for resale. What the Eighth Circuit did say, which is on appeal to the Supreme Court, is that the RBOC cannot be forced to recombine those elements. Instead they must provide access for competitors to do the recombining.

Let me address two other issues briefly. The first is the concept put forward by S. 1766 – the idea of the “date certain” for RBOC entry. Congress explicitly considered and rejected such an approach during the debate on the

Telecommunications Act. I would urge you to do so again.

There is simply no truth to the idea that allowing the RBOCs into the long distance market will spur long distance companies to work harder to enter the local market. As outlined above, the economic costs are so huge that no amount of lost market share in long distance will make possible the investment needed to build facilities to bypass entirely the RBOC networks. In fact, the loss of market share will only make it more difficult for CLECs to raise the money needed to build even limited local backbone networks.

The Committee should also closely examine what happened in Connecticut when Southern New England Telephone, a former Bell company, got into the long distance market without first facing significant local competition. SNET has gotten 40 percent of the long distance market for Connecticut customers, without any appreciable loss of local market share. Despite this massive loss of market share, long distance companies have been unable to successfully enter the local market. According to a detailed 1998 study by Economics and Technology – a Boston research group -- interstate long distance rates have remained the same (SNET's entry has not lowered prices) and local rates have actually INCREASED 1 percent. Consumers have not benefited from SNET's entry – only SNET has.

Finally, let me take a minute on LCI's proposal to the FCC and State commissions that they endorse structural separation as a sort of "safe harbor" for fast track approval of RBOC entry under section 271. LCI made this proposal in a good faith effort to find a way out of the current mess that is consistent with the statute. If we were changing the law we would recommend going further.

However, our proposal stays within the law and uses proven techniques to reduce the internal conflicts that an RBOC faces between faithfully complying with the law and protecting its shareholder interests. Under the LCI proposal an RBOC would voluntarily spin off its retail operations into a separate company. The network facilities would stay with a wholely owned subsidiary of the RBOC, and could focus exclusively on providing wholesale services. For an interim period, the network company would continue to service the RBOC's existing customers.

The new retail company, which could retain the RBOC name if the network subsidiary takes a new name, would be majority owned by RBOC shareholders, but would also have a significant percentage – say forty percent – of new stockholders through an initial public offering. Those stockholders would be represented by independent board members, and all compensation and benefits for the retail company management would be tied solely to its

performance, and not to the RBOC's.

In addition, the new retail company would start in the same place as all new CLECs – with no customers and the same minimal regulation. In order to get customers from the RBOC network subsidiary the retail company would have to win the customer and transfer them over using the same Operating Support Systems and unbundled network element platforms or resale as everyone else. This is the level playing field Congress had in mind when it enacted the Telecommunications Act.

The LCI proposal is more of the market based solution that Congress should endorse. It puts the market incentives in the right place for both the retail and network facility operations of the RBOC. It will be much easier for competitors to detect and demonstrate unfair bias by the network subsidiary to the new retail company, thus reducing the need for extensive oversight by the FCC and state commissions.

I thank the Committee for holding this hearing. It is important that everyone understand that local competition is not yet widely available, and that consumers will be immensely damaged if the RBOCs are allowed to enter the long distance market without first providing the unbundled network element platforms at cost based rates that are needed to ensure sustainable local

competition. I would be happy to answer any questions.